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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/648,429 | 08/25/2000 | Jordan J. Louviere | M-9235 US | 6023 |

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EXAMINER

PRIETO, BEATRIZ

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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2142

DATE MAILED: 07/01/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/648,429

Applicant(s)

LOUVIERE ET AL.

Examiner

B. Prieto

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2-3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This communication is in response to application filed 08/25/00, claims 1-46 remain pending on instant application and are hereby set forth for examination.
2. Drawings were reviewed and approved by draftsman.

Claim Rejections – 35 USC §102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1-46 are rejected under USC 102(e) as being anticipated by Herz U.S. Patent No. 6,460,036.

Regarding claim 15, Herz teaches substantial features of the invention as claimed, teaching an automated method comprising:

a methodology or procedure (“experiment”) (col 6/lines 3-20, procedure: col 17/lines 43-col 18/lines 27) configured (“defined”) for relating information or data (“treatments”) (col 29/lines 34-53) for a set of data files (“content data elements”) (col 5/lines 13-32);

performing (conducting) the experiment (col 58/lines 55-col 59/line 8) implemented by modules distributed (col 6/lines 40-44, 48-62) over a data communication network (N of Figs. 1-2) (col 29/line 67-

col 30/line 26, over the network, col 31/lines 39-col 32/line 2, conducted over the network, col 40/lines 56-65, col 48/lines 1-8);

collecting over the data network ("observation") data relating to user behavior associated with each treatment (collect: col 31/lines 59-col 32/line 2, gather: col 18/line 25-27); and

a program executed on a computer or processor ("scripting/schedule engine"), wherein the program, instructions or procedures ("script") perform the above functions implemented on a computer (computer program; col 55/lines 65-col 56/line 3, col 8/lines 61-col 9/line 5, computer executable program, col 30/lines 41-44).

Regarding claim 16, identifying desired objectives for user behavior (benefit desired; col 5/lines 42-4, 50-54, objective, col 31/lines 55-59);

identifying which treatments may likely to effect (influence) user behavior to achieve the desired objectives (col 18/lines 28-51, identify, col 17/lines 30-33); and

generating the various treatments using different combinations of the content elements (different combination areas of interest col 5/lines 13-22, different combination types of content, col 29/lines 37-53).

Regarding claim 17, defining an content attribute ("control variable") for the various treatments (col 21/lines 47-49, col 21/lines 61-col 22/line 5); and assigning a respective weight ("level") for the control variable for each treatment (col 21/lines 61-col 22/line 5).

Regarding claim 18, selecting a target object (treatment) for delivery to users (col 6/lines 15-20, selective listing, col 5/lines 16-22);

grouping users into a plurality of groups, each of users with similar interest inferred by behavioral characteristics (col 75/lines 56-65) and using these similarities to specifying a particular segment of users to receive the selected treatment (clustering user, col 30/lines 33-39, col 20/lines 51-55).

Regarding claim 19, sampling by quantitatively recording or measuring an event or condition ("statistically sampling") to specify a plurality of ("control") user's groups based in the interest similarity of the users (col 30/lines 33-39);

specifying a particular treatment to be delivered to the user in each (control) group (col 5/lines 13-22);

receiving identical requests for the same content topic from the respective user in each of the control groups (col 76/lines 37-46); and

in response to the identical requests, delivering to the at least one user in each control group a different treatment associated with the interest similarity characteristic of the group (deliver col 6/lines 15-20, designate, col 5/lines 16-22).

Regarding claim 20, monitoring (observing) site related behavior of users receiving the various treatments (monitoring col 58/lines 55-col 59/line 8, col 48/lines 1-8, procedure: col 17/lines 43-col 18/lines 27).

Regarding claim 21, this claim is substantially the same as claim 10, same rationale of rejection is applicable.

Regarding claim 22, collecting data of observed behavior of users (collect: col 31/lines 59-col 32/line 2, gather: col 18/line 25-27), each user belonging to a group ("control group") during the experiment (clustering user, col 30/lines 33-39).

Regarding claim 23, identifying elements of content, which potentially influence behavior of users (col 18/lines 28-51, identify, col 17/lines 30-33).

Regarding claim 1, an executable program ("an experiment engine") operable to define an procedure, method or process ("experiment") (col 58/lines 55-col 59/line 4) relating to data ("treatments") (col 29/lines 34-53) for a set of files ("content elements") (col 55/lines 65-col 56/line 3),

the experiment engine operable to perform or execute ("conduct") the experiment over a data network (N of Figs. 1-2) (col 40/lines 56-65, col 31/lines 39-col 32/line 2) (distributed modules implementing experiment col 6/lines 40-44, 48-62, col 29/line 67-col 30/line 26);

software modules or executable program(s) ("an observation module") operable to collect ("observation") data relating to user behavior for each treatment; (collect: col 31/lines 59-col 32/line 2, gather: col 18/line 25-27); and

software modules or executable program(s) ("a scripting/scheduling engine") operable to perform or execute ("coordinate") the operation(s) of the experiment engine and the observation module (col 8/lines 61-col 9/line 5, computer executable, col 30/lines 41-44).

Regarding claim 2, identify elements of content, which may (“influence”) affect user behavior to achieve a desired objective (col 18/lines 28-51, identify, col 17/lines 30-33).

Regarding claim 3, (“statistical sampling”) quantitative measure and/or recording of a condition(s) or an event procedure(s) (col 58/line 55-col 59/line 8, col 17/lines 44-col 18/line 4) used to deliver over the data network the various treatments to respective users of a (“control”) group with similar behavior characteristics (deliver: col 6/lines 15-20, designate content for delivery: col 5/lines 16-22).

Regarding claim 4, store data relating to the set of content elements (col 29/lines 34-53 for a set of content data elements col 5/lines 13-32); monitor designated user behavior (col 31/lines 59-col 32/line 2, col 18/line 25-27); and designate users to receive treatment during the experiment (col 31/lines 59-col 32/line 2, col 18/line 25-27).

Regarding claim 5, software (“an experiment manager object”) operable to perform or manage (“control”) the execution of the experiment (col 8/lines 61-col 9/line 5, computer, col 30/lines 41-44).

Regarding claim 6, executable software (“experiment engine comprises an experiment manager object”) configured to specify different treatments of content associated with different areas of interest (col 6/lines 15-20, designate, col 5/lines 16-22).

Regarding claim 7, executable software configured to define and implement (“statistical”) sampling (collection of information regarding an event) procedures conducted in orderly or methodically fashion (col 17/lines 45-col 18/line 4, methodically monitoring, col 58/lines 55-col 59/line 8).

Regarding claim 8, record the experiment under way and the participating users whose behavior was monitored (collect: col 31/lines 59-col 32/line 2, gather: col 18/line 25-27) and which are later grouped based on recorded experiment (col 30/lines 33-39, col 20/lines 51-55).

Regarding claim 9, store experiment data (col 31/lines 59-col 32/line 2, col 18/line 25-27).

Regarding 10, Internet data network supporting WWW applications (col 28/lines 64-col 29/line 11).

Regarding claim 11, software (“observation module comprises an observation access object”) operable to provide access to the (“observation”) data (col 29/lines 4-10).

Regarding claim 12, generate a set of criteria, predictions, derived estimates or similarity (“experiment rules”) for allocating treatments during the experiment (col 18/lines 32-40, col 5/lines 32-48).

Regarding claim 13, software (“interface”) operable to allow a user to interact with the method (col 29/lines 4-10).

Regarding claim 14, software (“allocator module”) operable to orderly or methodically, (“systematically”) deliver (“allocate”) a treatment to a user during the experiment (deliver, col 6/lines 15-20, designate, col 5/lines 16-22).

Regarding claim 24, this claim includes limitation substantially the same as those discussed on claims 1 and 15, same rationale of rejection is applicable, further limitation(s) include,

a (“content”) system (SS₁ of Fig. 2) and its supportive software implementation (“script”) for storing a set of content elements (col 29/lines 4-18); and

a (“communication management”) system (V₁ of Fig. 2) and its supportive software implementation (col 29/lines 4-11) in communication with the content system and operable to implement the experiment (col 29/lines 67-col 30/line 26), the method discussed on claims 1 and 22.

Regarding claim 25-27, these claims are substantially the same as claims 2-3 and 12, respectively, same rationale of rejection is applicable.

Regarding claim 28, wherein the content system is operable to distribute, deliver or designate (“allocate”) treatments to users according to the predictions or derived estimates (“experiment rules”) (deliver, col 6/lines 15-20, designate, col 5/lines 16-22).

Regarding claim 29, this claim is substantially the same as limitation(s) discussed on claim 18, same rationale of rejection is applicable.

Regarding claim 30, accessing content element over said data network comprises the Internet (col 28/lines 64-col 29/line 11, col 30/line 66-67, Internet providers).

Regarding claim 31, this claim is substantially the same as claim 17, same rationale of rejection is applicable.

Regarding claim 32, the content system and the communication management system are distributed over the data network (Figs. 1-2, col 29/lines 4-18, col 29/lines 67-col 30/line 26).

Regarding claim 33, executable software (“allocator module”) operable to support access or communication (“interface”) with the communication management system (col 19/lines 4-11).

Regarding claim 34, executable software (“allocator interface object”) operable to support access or communication (“interface”) with the content system (col 19/lines 4-32).

Regarding claim 35, a content provider (“interface”) operable to support an access or communication (“interface”) between the communication management system and a (“manager”) user (col 29/lines 4-32).

Regarding claim 36, this claim comprises limitation(s) substantially the same as those discussed on claims 1, 3-4 and 15, same rationale of rejection is applicable.

Regarding claims 37-39, these claims comprise limitation(s) substantially the same as those discussed on claims 2-3 and 10, respectively same rationale of rejection is applicable.

Regarding claim 40, this claim comprises limitation(s) substantially the same as those as claim 36, where claim 36 comprises limitation(s) substantially the same as those discussed on claims 1, 3-4 and 15, same rationale of rejection is applicable.

Regarding claim 41, this claim is substantially the same as claim 10, same rationale of rejection is applicable.

Regarding claim 42, identifying files (“elements of content”) which (“potentially”) may influence behavior of users achieve a desired objective (col 18/lines 28-51, identify, col 17/lines 30-33).

Regarding claim 43, this claim comprises limitation(s) substantially the same as those discussed on claims 1, 3, 7, 15, 19, 24, 15, same rationale of rejection is applicable, further limitations include providing a website

(I₁) on a data network (N)(Fig. 2);

receiving requests (Fig. 16, step 1602) for content (col 67/lines 40-50) from users accessing the website (col 76/lines 30-37) on the data network;

allocating over the data network a second treatment to each user not in the control group (col 20/lines 51-55, col 22/lines 44-46);

collecting observation data for observed behavior of users not in the control group (col 22/lines 1-5, 31-46).

Regarding claim 44, this claim is substantially the same as claim 2, same rationale of rejection is applicable.

Regarding claim 45, a website providing a web page at which the set of filed are is available (col 76/lines 30-37) in the form of any of the treatments (col 29/lines 34-53, col 5/lines 13-32).

Regarding claim 46, this claim is substantially the same as claim 10, same rationale of rejection is applicable.

Pertinent Prior Art:

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure; pertinence is presented in accordance with to MPEP§ 707.05. Copies of documents cited will be provided as set forth in MPEP§ 707.05(a):

(A) Moving Usability Testing Onto the Web, Martin Svensson, Arnold Johansson, Anna-Lena Ereback, Kristina Höök, Jussi Karlgren, 1998, pages 1-8.

Svensson et. al. teaches an automated system including defining an test in a experimental environment for performing usability testing experiments over the network, experiment relating to content information provided to users; collecting data related to user behavior with each provided content; selecting information for delivery to the users; grouping user with similar behavior characteristics and determining what content information each user is to receive based on collected data.

(B) Testing Web Site Design and Promotional Content, Dreze, X.; Zufryden, F., Aug 1998, pages 1-43.

Dreze teaches an in a experimental environment for conducting usability testing experiments over the network, experiment relating to web-based content information provided to users, e.g. test site design; sampling and tracking activities based on various statistical measures of the user's interaction with the provided content, collecting sample data related to user behavior with each provided content; grouping user with similar behavior characteristics (mouse-click steams) over a defined study period in which the test is conducted, and determining what content information each user is to receive based on collected data; identify the content which may achieve benefits to marketing or selling sectors, and selecting information for delivery to the users on preferences inferred by the collected data.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Prieto, B. whose telephone number is (703) 305-0750. The Examiner can normally be reached on Monday-Friday from 6:00 to 3:30 p.m. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's Supervisor, Mark R. Powell can be reached on (703) 305-9703. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-6606. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3800/4700.

Any response to this action should be mailed to:
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B. Prieto
TC 2100
Patent Examiner



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